

Assembly Bill No. 2793

CHAPTER 273

An act to amend Sections 24045.7 and 25503.42 of, and to add Section 23433.5 to, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2793, Committee on Governmental Organization. Alcoholic beverage control: advertising: club licenses: tied-house restrictions: nonprofit theaters: venues.

(1) Existing law provides for the issuance of a club license for the sale of alcoholic beverages to specified organizations.

This bill would authorize the Department of Alcoholic Beverage Control to issue a club license to nonprofit lawn bowls clubs, that do not discriminate or restrict membership, as specified.

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill, by including provisions that would be subject to those existing criminal sanctions, would impose a state-mandated local program.

(2) Under the Alcoholic Beverage Control Act, the Department of Alcoholic Beverage Control may issue a special on-sale general license to any nonprofit theater company, subject to specified requirements. Existing law permits a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, to serve on the board of trustees of a nonprofit theater company operating a theater in Napa County licensed pursuant to these provisions.

This bill would additionally permit a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, to serve on the board of trustees of a nonprofit theater company operating a theater in the City of Livermore licensed pursuant to these provisions.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Livermore.

(3) Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages but expressly authorizes specified licensees to purchase advertising space or time from specified fully enclosed venues

located in Los Angeles County that have a patronage capacity in excess of 2,000, as described, under specified conditions.

This bill would limit the patronage capacity allowed in the described venues to at least 2,000, but not more than 3,000.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 23433.5 is added to the Business and Professions Code, to read:

23433.5. (a) For the purposes of this article, “club” also means any nonprofit lawn bowls club.

(b) No license shall be issued to any nonprofit lawn bowls club qualifying as a club pursuant to this section if the nonprofit lawn bowls club in any manner restricts membership or the use of its facilities on the basis of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

SEC. 2. Section 24045.7 of the Business and Professions Code is amended to read:

24045.7. (a) (1) The department may issue a special on-sale general license to any nonprofit theater company that is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States. Any special on-sale general license issued to a nonprofit theater company pursuant to this subdivision shall be for a single specified premises only.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve alcoholic beverages to ticketholders only during, and two hours prior to and one hour after, a bona fide theater performance of the company.

(3) Notwithstanding any other provision in this division, a licensed manufacturer, winegrower, manufacturer’s agent, California winegrower’s agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, employee, or agent of that person, may serve on the board of trustees or as an officer, director, or employee of a nonprofit theater company operating a theater in Napa County or the City of Livermore licensed pursuant to this subdivision.

(4) An applicant for such a license shall accompany the application with an original issuance fee of one thousand dollars (\$1,000) and shall pay an annual renewal fee as provided in Section 23320.

(5) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order

to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exceptions established by this subdivision to the general prohibition against tied interests must be limited to their express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(b) (1) The department may issue a special on-sale beer and wine license to any nonprofit theater company which has been in existence for at least eight years, which for at least six years has performed in facilities leased or rented from a local county fair association, and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of the United States.

(2) Theater companies holding a license under this subdivision may, subject to Section 25631, sell and serve beer and wine to ticketholders only during, and two hours prior to, a bona fide theater performance of the company. Beer and wine may be sold from an open-air concession stand which is not attached to the theater building itself, if the concession stand is located on fair association property within 30 feet of the theater building and the alcoholic beverages sold are consumed only in the theater building itself, or within a designated outdoor area in front of and between the concession stand and the main public entrance to the theater building. Nothing in this section permits a theater company to sell beer or wine during the run of a county fair.

(3) An applicant for a license under this subdivision shall accompany the application with an original issuance fee equal to the annual renewal fee and shall pay an annual renewal fee as provided in Section 23320.

SEC. 3. Section 25503.42 of the Business and Professions Code is amended to read:

25503.42. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a holder of a distilled spirits rectifiers general license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase indoor advertising space or time at a fully enclosed venue with box office sales and attendance by the public on a ticketed basis only, with a patronage capacity in excess of 2,000, but not more than 3,000, located in Los Angeles County within the area subject to the Los Angeles Sports and Entertainment District Specific Plan adopted by the City of Los Angeles pursuant to ordinance number 174225, as approved on September 6, 2001, where the owner of the venue is not the on-sale retail licensee. The purchase of the indoor advertising space or time shall be subject to all of the following conditions:

(1) The indoor advertising space or time is purchased only at the venue specified in this subdivision.

(2) The purchase of indoor advertising space or time shall be conducted pursuant to a written agreement entered into by the beer manufacturer,

holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent and the owner of the venue described in this subdivision. A holder of a wholesale license shall not be a party to the written agreement or otherwise have any direct or indirect obligations under the agreement, including an obligation to share in the costs or contribute to the costs of the indoor advertising space or time purchased pursuant to this section.

(3) An agreement for the purchase of indoor advertising space or time pursuant to this section shall not be conditioned directly or indirectly, in any way, on the purchase, sale, or distribution of any alcoholic beverage manufactured or distributed by the advertising beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent by any on-sale retail licensee.

(4) An on-sale licensee operating at a venue described in this subdivision where indoor advertising space or time is purchased shall serve other brands of beer distributed by a competing beer wholesaler in addition to the brands manufactured or marketed by the advertising beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brands produced or marketed by the advertising winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brands manufactured or marketed by the advertising distilled spirits manufacturer, the distilled spirits manufacturer's agent, or a holder of a distilled spirits rectifiers general license.

(5) No more than 15 percent of the retail licensee's monetary expenditures for distilled spirits and wine for sale on its licensed premises in any calendar year shall be for products manufactured, produced, or distributed by the holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent that has purchased indoor advertising space.

(b) A beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(c) An on-sale retail licensee who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, California winegrower's agent, holder of a distilled

spirits rectifiers general license, distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase indoor advertising time or space pursuant to subdivision (a) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine equal to the greater of an amount equal to the entire value of the advertising space or time involved in the contract or ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) For purposes of this section, "beer manufacturer" includes a holder of a beer manufacturer's license, a holder of an out-of-state beer manufacturer's certificate, or a holder of a beer and wine importer's general license.

(e) Nothing in this section shall authorize the purchasing of indoor advertising space or time pursuant to subdivision (a) by any beer manufacturer, holder of a winegrower's license, a California winegrower's agent, a distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent directly or indirectly from any on-sale licensee.

(f) A venue owner that meets the description provided in subdivision (a) and that enters into a written agreement pursuant to this section shall obtain an annual certificate from the department. The director shall prepare, as part of the annual report required by Section 23055 for submission to the Legislature, a listing of the number of certifications made pursuant to this section or the absence of any certifications. Where there have been no certifications made pursuant to this section for two consecutive years, this information shall be included in the report.

(g) The Legislature finds that it is necessary and proper to require a separation among manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests shall be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the conditions unique to the City of Livermore.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

O